

Indiana Public Defender Commission Meeting Minutes

September 22, 2010

Chairman Mark Rutherford called the business meeting to order at 2:05 pm. Commission members in attendance were, Sen. Brent Steele, Hon. Diane Ross Boswell, and David Hensel. Also in attendance were staff counsel Deborah Neal and Larry Landis of the Indiana Public Defender Council. Guests in attendance included Tom Diller from Jay County, Hon. Sam Swaim, Parke Circuit Court Judge, and Amy Hutchison, Tippecanoe County Chief Public Defender. Introductions were made, and Vermillion County's Amended Comprehensive Plan was added to the agenda as item 16a. Deborah Neal informed the Commission of the resignation of Michele Lofthouse as staff counsel.

In deference to the guests in attendance, Chairman Rutherford asked for reports from the county representatives.

Representative from Jay County: Tom Diller gave a history of the public defense program in Jay County, which culminated in the present problem of inadequate staff to handle court appointed cases. He reported that the county has been inundated with meth drug cases that require several conflict counsels. Mr. Diller stated that a new attorney has been hired and will begin taking cases in October 2010. In appreciation of Jay County's proactive stance on achieving compliance with caseload standards, David Hensel made the motion that Jay County receive their requested reimbursement for the 2nd quarter 2010; Sen. Steele seconded the motion. There was no discussion or opposition. The motion passed unanimously.

Representative from Parke County: Judge Sam Swaim addressed the Commission regarding compliance problems in Parke County. He noted that probation violation cases had been over-reported; that he had been keeping a tally of case assignments from the bench without taking into consideration the weighted value of the cases; and that the error of attorney Laura Paul being paid \$50 per hour, not the \$60 per hour required by the Parke County Comprehensive Plan, was being corrected. Upon his request, Judge Swaim received copies from staff counsel of Ms. Paul's billings showing \$50 per hour in order to adjust past payments to reflect a \$60 per hour fee. Judge Boswell made the motion that Parke County receives their requested reimbursement for the 2nd quarter 2010; David Hensel seconded the motion. There was no discussion or opposition. The motion passed unanimously.

Representative from Tippecanoe County: Amy Hutchison, Chief Public Defender, explained to the Commission that problems with over assigning cases to counsel directly appointed by the judges is corrected. Previously, these appointments were not handled through the Tippecanoe County Public Defender Agency. Ms. Hutchison reported on the difficulty of her office tracking these case assignments; the assignments being recorded from the attorneys' bills which resulted in counting cases in one quarter that were appointed in 2008, 2009 and 2010. She stated the entire system has been changed so that the Tippecanoe County Public Defense Agency receives a copy of the Appearance filed by assigned counsel; the judges and assigned counsel have been

trained on mixed and weighted caseloads; and Children-in-Need of Services cases will be counted by the defendant, not the number of children.

Judge Boswell asked Ms. Hutchison to explain the assignment of cases to counsel outside the Agency. She stated that most case assignments from the bench were due to conflict cases. David Hensel made the motion that Tippecanoe County receives their requested reimbursement for the 2nd quarter 2010; Judge Boswell seconded the motion. There was no discussion or opposition. The motion passed unanimously.

Requests for 50% Reimbursement in Capital Cases: Deborah Neal reported that two claims were submitted outside the 120-day period. Staff counsel did recommend that they be paid. The Commission allowed the transcript claim on *Davis*, and the *Wisehart* claim was corrected to \$28,835.40 (original request of Madison County) from \$28,970.40. Former Staff Counsel, Michele Lofthouse, had reported an error in attorney fees that were underpaid. However, the Commission cannot reimburse 50% on an amount higher than what was paid by the county. Sen. Steele moved to approve payment of capital claims in the amount of \$130,324.52 and David Hensel seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION Reimbursement Requests in Capital Cases September 22, 2010		
COUNTY	DEFENDANT	TOTAL
Madison	Wisehart	\$28,835.40
Marion	Allen	\$7,909.99
	Davis 1	\$20,537.03
	Davis 2	\$44,259.04
Spencer	Ward	\$216.00
Vanderburgh	Weisheit	\$24,202.22
	Wilkes	\$4,364.84
TOTAL		\$130,324.52

Requests for 40% Reimbursement in Non-Capital Cases: Deborah Neal reported claims in non-capital cases totaled \$3,913,056.22 and no issues existed as to reimbursement requests. David Hensel moved to approve the claims and Judge Boswell seconded the motion. The motion passed unanimously.

Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION						
Second Quarter 2010 Requests for Reimbursements in Non-Capital Cases						
9/22/2010						
COUNTY	2010 Period Covered	Total Expenditure	Adjustment For Non- Reimbrsbl	% of Adjstmt	Eligible Expenditure	40% Reimbursed
ADAMS	4/01 - 06/30	\$97,686.57	\$15,268.37	16%	\$82,418.20	\$32,967.28
ALLEN	4/01 - 06/30	\$752,713.71	\$84,120.98	11%	\$668,592.73	\$267,437.09
BENTON	4/01 - 06/30	\$5,026.58	\$2,345.74	47%	\$2,680.84	\$1,072.34
BLACKFORD	4/01 - 06/30	\$32,596.00	\$5,974.00	18%	\$26,622.00	\$10,648.80
CARROLL	4/01 - 06/30	\$32,860.18	\$10,672.63	32%	\$22,187.55	\$8,875.02
CLARK	4/01 - 06/30	\$177,250.75	\$50,130.67	28%	\$127,120.08	\$50,848.03
DECATUR	4/01 - 06/30	\$56,375.32	\$17,083.43	30%	\$39,291.89	\$15,716.76
FAYETTE	4/01 - 06/30	\$89,174.26	\$20,688.43	23%	\$68,485.83	\$27,394.33
FLOYD	4/01 - 06/30	\$145,442.58	\$24,064.13	17%	\$121,378.45	\$48,551.38
FOUNTAIN	4/01 - 06/30	\$28,783.53	\$7,498.23	26%	\$21,285.30	\$8,514.12
FULTON	4/01 - 06/30	\$56,483.63	\$21,449.48	38%	\$35,034.15	\$14,013.66
GRANT	4/01 - 06/30	\$270,427.00	\$25,312.00	9%	\$245,115.00	\$98,046.00
GREENE	4/01 - 06/30	\$69,153.60	\$11,044.44	16%	\$58,109.16	\$23,243.66
HANCOCK	4/01 - 06/30	\$94,105.75	\$23,721.25	25%	\$70,384.50	\$28,153.80
HOWARD	4/01 - 06/30	\$336,584.38	\$53,816.51	16%	\$282,767.87	\$113,107.15
JASPER	4/01 - 06/30	\$64,835.95	\$14,442.13	22%	\$50,393.82	\$20,157.53
JAY	4/01 - 06/30	\$79,299.50	\$19,183.51	24%	\$60,115.99	\$24,046.40
JENNINGS	4/01 - 06/30	\$49,877.29	\$8,762.97	18%	\$41,114.32	\$16,445.73
KNOX	4/01 - 06/30	\$184,160.55	\$68,510.12	37%	\$115,650.43	\$46,260.17
KOSCIUSKO	4/01 - 06/30	\$122,456.65	\$43,452.36	35%	\$79,004.29	\$31,601.72
LAGRANGE	4/01 - 06/30	\$37,628.61	\$5,759.46	15%	\$31,869.15	\$12,747.66
LAKE	4/01 - 06/30	\$755,092.95	\$1,071.05	0%	\$754,021.90	\$301,608.76
LAPORTE	4/01 - 06/30	\$143,832.73	\$19,008.86	13%	\$124,823.87	\$49,929.55
MADISON	4/01 - 06/30	\$403,551.59	\$37,205.03	9%	\$366,346.56	\$146,538.62
MARION	4/01 - 06/30	\$4,239,371.04	\$696,248.71	16%	\$3,543,122.33	\$1,417,248.93
MARTIN	4/01 - 06/30	\$19,585.76	\$13,736.04	70%	\$5,849.72	\$2,339.89
MONROE	4/01 - 06/30	\$376,203.16	\$68,024.16	18%	\$308,179.00	\$123,271.60
MONTGOMERY	4/01 - 06/30	\$126,699.62	\$52,585.99	42%	\$74,113.63	\$29,645.45
NOBLE	4/01 - 06/30	\$91,095.18	\$14,226.51	16%	\$76,868.67	\$30,747.47
OHIO	4/01 - 06/30	\$24,862.08	\$1,278.90	5%	\$23,583.18	\$9,433.27

ORANGE	4/01 - 06/30	\$54,206.65	\$12,408.75	23%	\$41,797.90	\$16,719.16
PARKE	4/01 - 06/30	\$33,871.92	\$8,467.98	25%	\$25,403.94	\$10,161.58
PERRY	4/01 - 06/30	\$75,109.00	\$15,682.10	21%	\$59,426.90	\$23,770.76
PIKE	4/01 - 06/30	\$37,750.20	\$5,792.97	15%	\$31,957.23	\$12,782.89
PULASKI	4/01 - 06/30	\$21,402.47	\$3,328.00	16%	\$18,074.47	\$7,229.79
RUSH	4/01 - 06/30	\$56,664.12	\$16,527.04	29%	\$40,137.08	\$16,054.83
SAINT JOSEPH	4/01 - 06/30	\$443,660.00	\$62,207.26	14%	\$381,452.74	\$152,581.10
SHELBY	4/01 - 06/30	\$100,391.70	\$12,218.27	12%	\$88,173.43	\$35,269.37
SPENCER	4/01 - 06/30	\$24,838.15	\$2,408.00	10%	\$22,430.15	\$8,972.06
STEBEN	4/01 - 06/30	\$64,948.93	\$12,521.54	19%	\$52,427.39	\$20,970.96
SULLIVAN	4/01 - 06/30	\$41,780.17	\$13,999.95	34%	\$27,780.22	\$11,112.09
SWITZERLAND	4/01 - 06/30	\$43,276.22	\$15,637.63	36%	\$27,638.59	\$11,055.44
TIPPECANOE	4/01 - 06/30	\$479,717.26	\$72,760.08	15%	\$406,957.18	\$162,782.87
UNION	4/01 - 06/30	\$7,780.78	\$222.82	3%	\$7,557.96	\$3,023.18
VANDEBURGH	4/01 - 06/30	\$589,559.33	\$107,763.32	18%	\$481,796.01	\$192,718.40
VERMILLION	4/01 - 06/30	\$32,360.47	\$12,690.20	39%	\$19,670.27	\$7,868.11
VIGO	4/01 - 06/30	\$456,876.91	\$50,539.58	11%	\$406,337.33	\$162,534.93
WABASH	4/01 - 06/30	\$55,894.10	\$11,708.60	21%	\$44,185.50	\$17,674.20
WARREN	4/01 - 06/30	\$6,613.50	\$1,890.00	29%	\$4,723.50	\$1,889.40
WASHINGTON	4/01 - 06/30	\$85,080.15	\$16,897.81	20%	\$68,182.34	\$27,272.94
TOTAL		\$11,674,998.53	\$1,892,357.99		\$9,782,640.54	\$3,913,056.22

Approval of Minutes from 6/23/10 Meeting: Sen. Steele moved to approve the minutes, and David Hensel seconded the motion. There was no discussion or opposition. The minutes were approved.

2011 Commission Meeting Dates: Deborah Neal proposed meeting March 23, 2011, June 22, 2011, September 21, 2011 and December 14, 2011. David Hensel moved to approve the 2011 meeting dates as proposed, and Judge Boswell seconded the motion. There was no discussion or opposition. The meeting dates were approved.

Commission Members Terms of Service: Deborah Neal reminded the members of the ending date of their four year appointment to the Commission. She asked if the members whose appointment date had passed if they wanted to contact their appointing entity regarding reappointment. After discussion, it was decided that no action was to be taken at this time.

Deborah Neal announced that Commission Member, Bettye Lou Jerrel, has resigned and that a Certificate of Appreciation from the Supreme Court was being prepared to honor Ms. Jerrel's lengthy service to the Indiana Public Defender Commission. Ms. Jerrel will be invited to the December meeting to receive the Certificate, however, if she is unable to attend Chairman Rutherford offered to deliver the Certificate to Bettye Lou in person at her home.

Staff Counsel Report: Deborah Neal reported on county visits to Adams, Delaware and DeKalb. She reported that she will be visiting Jefferson County October 1, 2010 to explain the public defense reimbursement program. Ms. Neal noted that eight new counties may be requesting reimbursement in 2011, which would result in additional reimbursements of \$943,000 from the fund if all eight counties qualify.

Budget Narrative: The Commission members received copies of the Indiana Public Defense Fund budget narrative that was presented to State Court Administration to include in the Supreme Court's legislative budget request. The members discussed the effect on the Supreme Court's budget of the Public Defense Fund budget requesting \$21 million for FY 2011-12, and \$24 million for FY 2012-13 when all other departments of the Supreme Court are reducing budgets. Larry Landis pointed out the obligation the Commission has to inform the Legislature of increased costs to the Fund in providing the 40% promised to the counties that complied with Commission Standards. Chairman Rutherford suggested it may be time to discuss the Indiana Public Defender Commission's independence from the Supreme Court with the Chief Justice. Deborah Neal was directed by Chairman Rutherford to arrange for a meeting with the Chief Justice to discuss this matter.

Lawrence County Comprehensive Plan: Staff counsel recommended that the Comprehensive Plan adopted by Lawrence County be approved. David Hensel made the motion to approve Lawrence County's Comprehensive Plan and Judge Boswell seconded the motion. There was no discussion. The motion passed unanimously.

Financial Status of Public Defense Fund: Deborah Neal reported that after June 30, 2010 the State Budget Agency put the Public Defense Fund's remaining \$2,042,216.68 in a closing account and the June claims were paid from the FY10-11 first appropriation of \$9,125,000 after July 1, 2010. According to the State Court Administration fiscal personnel, the Public Defense Fund balance did not reflect the \$2,042,216.68 put into a closing account by the State Budget Agency, nor the \$37,510 belonging to the Public Defense Fund which was already in this closing account. Through several e-mail discussions, Ms. Neal was able to convince the State Budget Agency to return the \$2,079,726.68 to the Public Defense Fund for appropriation by the Indiana Public Defender Commission. Ms. Neal provided an updated Fiscal Report spreadsheet.

Illinois Death Penalty Seminar: The Commission approved the Illinois Death Penalty Seminar, sponsored by The Office of the State Appellate Defender, Capital Trial Assistance Unit and the Illinois Institute for Continuing Legal Education, for purposes of Criminal Rule 24's required 12 CLE credits needed by attorneys to qualify as capital defense lead and co-counsel.

Other Matters: Vermillion County submitted an Amended Comprehensive Plan for approval. Ms. Neal explained the changes proposed by Vermillion County and recommended that the amended plan be approved. Sen. Steele moved to approve the Vermillion County Amended Comprehensive Plan and David Hensel seconded the motion. The motion passed unanimously.

Adjournment: The next Commission meeting is scheduled for December 15, 2010. There being no further business to discuss, Judge Boswell moved to adjourn the meeting, and David Hensel seconded the motion. The motion passed and the meeting adjourned at 3:35 p.m.

Mark Rutherford, Chairman

Date